IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6297 OF 2005

Zilla Parishad, Kolhaour.... Petitioner

versus

Mahadeo K. Mali & anr..... Respondent.

shri S.R.Nargolkar for the petitioner
ShriS. Manale i/b S.S.Pakale for the respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 2ND MARCH, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The respondent was appointed as Laboratory Technician on 18-5-1984. The appointment was termed as a temporary appointment for a fixed period and subject to availability of candidates selected by the selection board. On termination of the service of the respondent after a period of four years, the respondent filed a complaiint before the Labour Court under section 28 of the MRTP & PULP Act, complaining that the present petitioners have engaged in an unfair labour practice. The main plank of defence of the petitioner before the labour court was that there is no sanctioned post of laboratory technician in the

staffing pattern of the Zilla Parishad. Hence no relief can be granted to the respondent as claimed. The labour court found that the petitioners have engaged in an unfair labour practice as the termination was not in compliance with the provions of sec. 25-F of the Industrial Disputes Act. Hence directed reinstatement of the respondent with full backwages in the post of labaoratory technician.

3. Aggreived by the order passed by the labour court, the petitioner filed a revision before the Industrial court which met with the same fate. As the Industrial court concurred with the view taken by the labour court,it dismissed the revision.

4. Aggreived thereby the present writ petition has been filed by the employer. In view of the interim order passed by the labour court the present petitioner has reinstated the respondent since the year 1990 but the reinstatement was in the post of laboratory assistant, instead of laboratory technician. Till date the respondent continues to work in the post of laboratory asistant, in view of the admitted position that in the staffing pattern of the petitioner, there does not exist any post of laboratory technician.

5. On the last date of hearing the learned counsel

for the respondent has taken time to ascertain from his client as to whether the respondent is ready and willing to work as laboratory assistant, in which post he is infact working since 1990. The learned ccounsel for the respondent on instructions from his client, who is present in the court, makes a statement that the repondent is ready and willing to work in the post of laboratory assistant as there is no sanctioned post of laboratory technician in the establishment of the petitioner. In this view of the matter, the writ petition deserves to be partly allowed and I proceed to partly allow the same by passing the following order.

6. The impugned orders passed by the labour court ad the Industrial court stands modified only to the extent of granting reinstatement to the respondent in the post of laboratory asistant instead of laboratory technician. Needless to mention that the respondent shall be entitled to continuity of service and all other incidental and ancilliary benefits flowing therefrom except difference of salary in the post of laboratory assistant and laboratory technician. Neither, the petitioner shall have any claim for recovery of amount from the respondent for the period prior to his termination and the respondent shall not have any claim for difference of salary in the post of laboratoey technician and laboratory assistant after

his termination. The respondent shall be entitled from the date of his termination onwards to the scale prescribed for the post of laborotary assistant. The arrears, if any, be paid, if not already paid.

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